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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

ADAK EAGLE ENTERPRISES, LLC )  
d/b/a ADAK TELEPHONE UTILITY )

CC Docket No. 96-45

Petition for Waiver of Sections 36.611, )  
36.612, 54301(b), 54.314(d), 54.309(a)(3), )  
69.2(hh), and 69.3(e)(6) of Commission's )  
Rules )

MOTION FOR CLARIFYING ORDER

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Filed: September 18, 2006

Before the  
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69.2(hh), and 69.3(e)(6) of Commission's )  
Rules )

**MOTION FOR CLARIFYING ORDER**

Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility ("AEE") respectfully requests that the Federal Communications Commission ("Commission") issue an order clarifying the scope of the waiver of sections 36.611 and 36.612 of the Commission's rules<sup>1</sup> granted in the Commission's December 29, 2005, order regarding AEE's petition for waiver in this proceeding.<sup>2</sup> Clarification is needed to ensure that AEE is eligible to receive high-cost loop support through December 31, 2007, based on annualized current costs trued up to actual cost levels. AEE further requests that this clarification be provided by October 31, 2006, so that the availability of high-cost loop support can be promptly incorporated into AEE's anticipated November local rate reduction filing.

**I. BACKGROUND**

On February 9, 2005, AEE filed a petition seeking the waiver of a number of the Commission's rules, including sections 36.611 and 36.612 of the Commission's historical cost

<sup>1</sup> 47 C.F.R. §§ 36.611, 36.612.

<sup>2</sup> See *Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility, Petition for Waiver of Sections 36.611, 36.612, 54.301(b), 54.314(d), 54.309(a)(3), 69.2(hh), and 69.3(e)(6) of Commission's Rules*, Order, CC Docket No. 96-45, DA 05-3352, 20 FCC Rcd 20543 (Wir. Comp. Bur., Dec. 29, 2005) ("Order").

1 rules. AEE sought this waiver in order to receive immediate access to high-cost loop support  
2 payments based on AEE's current costs. As the Commission noted in its Order granting AEE's  
3 petition, absent a waiver of the historical cost rules, carriers generally do not receive high-cost  
4 loop support incurred in a calendar year until the beginning of the second calendar year after the  
5 costs are incurred.<sup>3</sup> In reviewing its previous decisions, the Commission observed that waivers  
6 have been granted "primarily to accelerate the provision of support to cover costs incurred by  
7 new carriers initiating or extending service in predominantly unserved areas," in order to avoid  
8 "discouraging new carriers from extending service in unserved remote areas, thereby frustrating  
9 the statutory goal of promoting the provision of services at reasonable rates."<sup>4</sup>  
10

11 In its Order, the Commission found that without immediate access to high-cost  
12 loop support, AEE's customers "would have to wait at least two years for local service rate relief  
13 due to the customary lag in receiving such support."<sup>5</sup> The Commission further found that denial  
14 of immediate high-cost loop support to AEE could discourage the extension of service and would  
15 impair AEE's ability to provide telecommunications services at affordable rates.<sup>6</sup> Thus, the  
16 Commission granted AEE's request for waiver of sections 36.611 and 36.612 "to the extent  
17 necessary to permit [AEE] to receive high-cost loop support for the period beginning  
18 May 25, 2005, the date the Alaska Commission designated it as an ETC."<sup>7</sup> The Commission  
19 expanded on the grant of this waiver as follows:  
20  
21

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22 <sup>3</sup> Order at 4, ¶ 7.  
23

24 <sup>4</sup> *Id.* at 5, ¶ 9.

25 <sup>5</sup> *Id.* at 4-5, ¶ 8.

26 <sup>6</sup> *Id.* at 5, ¶¶ 9-10.

27 <sup>7</sup> *Id.* at 5, ¶ 10.  
28

1 Adak Telephone's support initially, for the period May 25, 2005  
2 through December 2006, will be based on annualized current costs  
3 followed by true-ups using actual costs. . . . We direct Adak  
4 Telephone to submit quarterly updates of its actual costs in  
5 accordance with the Commission's rules, so that NECA may  
6 determine whether adjustments for the 2005 and 2006 high-cost  
7 loop support amounts are necessary. Payment for periods  
8 subsequent to December 2006 will be based on historical data in  
9 accordance with the Commission's Rules.<sup>8</sup>

10 At the time it filed its petition on February 9, 2005, AEE had applied for a  
11 substantial loan from the U.S. Department of Agriculture, Rural Utilities Service ("RUS"), to  
12 cover the necessary costs to upgrade the existing plant, much of which was outdated.<sup>9</sup> The RUS  
13 loan, however, was conditioned on "evidence that [AEE] has received all necessary approval  
14 from the [FCC and NECA] to receive support from USF and waivers have been granted by the  
15 FCC to participate in the NECA pools and receive USF funds immediately."<sup>10</sup> Thus, AEE could  
16 not finalize and secure the RUS loan until after the Commission issued the Order on  
17 December 29, 2005. Due to the time involved in finalizing and processing the loan after the  
18 Order was issued, funds were not available to AEE until June of 2006. As such, AEE did not  
19 incur valid high-cost loop support costs during 2005 due to the low level of loop costs and lack  
20 of investment that year.

21 With the availability of RUS loan funds in June of 2006 and the commencement  
22 of construction funded by the RUS loans, AEE expects to begin receiving high-cost loop support  
23 based on annualized actual costs beginning in October 2006. In late November or early

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24 <sup>8</sup> *Id.*

25 <sup>9</sup> *Id.* at 2, ¶ 2; see also *Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility, Petition for Waiver of the*  
26 *Commission's Rules to Obtain Accelerated USF Support and to Participate in NECA Pools and Tariffs*, at 6  
27 (Feb. 9, 2005).

28 <sup>10</sup> See Exhibit A, Sep. 27, 2005, correspondence from Jerry H. Brent to Larry D. Mayes, p. 2.

December of 2006, AEE intends to file a rate reduction filing with the Regulatory Commission of Alaska ("RCA") in order for its receipt of high-cost loop support to be reflected in local service rates.

## II. DISCUSSION

At the time it submitted its petition, AEE anticipated that it would receive the necessary waivers, complete the processing of its RUS loan, and begin to incur costs eligible for high-cost loop support during 2005. Had that occurred, AEE's 2005 cost data would have provided a basis for calculating AEE's high-cost loop support in 2007 using the Commission's historical cost rules. Given, however, that the Commission's Order granting the requested waiver from historical cost rules was not issued until December 29, 2005, AEE was unable to finalize its financing arrangements and begin construction until 2006. Under the terms of the Order, AEE will be able to receive high-cost loop support in 2006 based on annualized current costs followed by true-ups using actual costs. In 2007, however, AEE will not receive high-cost loop support due to the customary lag resulting from application of historical cost rules and the absence of valid high-cost support costs in 2005, despite the fact that AEE will incur eligible costs in 2007. In 2008, application of the historical cost rules will allow AEE to receive high-cost support based on its 2006 investment costs.

Thus, limiting AEE's use of trued up annualized current costs to the period ending December 31, 2006, will create a whipsaw effect on AEE and its ratepayers, with high-cost loop support available in 2006, absent in a large part of 2007, and available again in 2008. Moreover, this result is inconsistent the Commission's grant of AEE's requested waiver of sections 36.611 and 36.612 "to the extent necessary to permit [AEE] to receive high-cost loop support for the

1 period beginning May 25, 2005.”<sup>11</sup> In the current circumstance, the waiver of the Commission’s  
2 historical cost rules must extend through December 31, 2007, rather than through  
3 December 31, 2006, in order for AEE to continue to receive high-cost loop support. Clarifying  
4 the Order to permit AEE to use trued-up annualized current costs through December 31, 2007,  
5 will allow AEE to receive high-cost loop support for the full period contemplated in the  
6 Commission’s Order. Beginning in 2008, application of the historical cost rules will permit AEE  
7 to receive high-cost loop support based on its 2006 costs.  
8

9 Permitting AEE to use trued-up annualized current costs rather than historical  
10 costs for two years following grant of the waiver of sections 36.611 and 36.612 is consistent with  
11 the Commission’s treatment in other proceedings. For example, on January 18, 2001, the  
12 Commission issued an order granting Mescalero Apache Telecom, Inc., a waiver of  
13 Sections 36.611 and 36.612.<sup>12</sup> This order provided that the waiver was effective from January 1,  
14 2001 through December 21, 2002,<sup>13</sup> thereby giving the utility nearly two years from the issuance  
15 of the order before it was subjected to the historical cost rules.<sup>14</sup>  
16

17 As discussed in Section I above, AEE expects to begin receiving high-cost loop  
18 support beginning in October 2006 based on loan-funded construction costs commencing in the  
19

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20 <sup>11</sup> Order at 5, ¶ 10.

21 <sup>12</sup> *Mescalero Apache Telecom, Inc., GTE Southwest Incorporated, and Valor Telecommunications of New Mexico,*  
22 *LLC, Joint Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary of the*  
23 *Commission’s Rules; Mescalero Apache Telecom, Inc., Waiver of Sections 61.41(c)(2), 69.3(e)(11), 36.611, and*  
24 *36.612 of the Commission’s Rules, Order, CC Docket No. 96-45, 16 FCC Rcd 3813 (Acc. Pol. Div. 2001)*  
25 *(“Mescalero Apache”)*

26 <sup>13</sup> *Id.* at ¶ 34.

27 <sup>14</sup> In the Order, the Commission cited *Mescalero Apache* for the proposition that its treatment of AEE’s petition was  
28 consistent with previous waivers of sections 36.611 and 36.612. Order at 5, ¶ 10 & n.38. In *Mescalero Apache*,  
however, the waiver extended for approximately twice the length of time following the order as does AEE’s current  
waiver.

1 second half of 2006. In November 2006, AEE intends to file a rate reduction filing with the  
2 RCA, in order for high-cost loop support receipts commencing in October 2006 to be reflected in  
3 local service rates. However, any uncertainty regarding the availability of high-cost support after  
4 December 31, 2006, may require AEE to limit its requested rate reduction or delay its reduction  
5 filing until that uncertainty is resolved. AEE therefore requests that the Commission provide the  
6 requested clarification by October 31, 2006, so that the availability of AEE's high-cost support  
7 can be promptly incorporated into AEE's anticipated November 2006 rate reduction filing.  
8

9 Alternatively, if the Commission is unable to provide the requested clarification  
10 by October 31, 2006, AEE requests that the Order be clarified by December 31, 2006. Currently,  
11 under the terms of the Order, AEE will be unable to use annualized current cost information to  
12 calculate high-cost loop support after December 31, 2006. Therefore, the requested clarification  
13 is needed by December 31, 2006, to ensure that AEE does not experience a gap in high-cost loop  
14 support. As a further alternative, if clarification is provided after December 31, 2006, AEE  
15 requests that the clarification provide that the waiver of the Commission's historical cost rules is  
16 effective from the period beginning May 25, 2005, through December 31, 2007, including any  
17 time lapsed between January 1, 2007, and the time that clarification is provided.  
18

### 19 III. CONCLUSION

20 For all the foregoing reasons, AEE respectfully requests that the Commission  
21 clarify paragraph 10 of the Order to provide that in order for AEE to receive high-cost loop  
22 support for the period beginning May 25, 2005, the waiver of sections 36.611 and 36.612 of the  
23 Commission's rules shall extend from May 25, 2005, through December 31, 2007. AEE further  
24 requests that this clarification be provided by October 31, 2006, so that the availability of AEE's  
25  
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1 high-cost support can be promptly incorporated into AEE's anticipated late November or early  
2 December 2006 rate reduction filing.

3 RESPECTFULLY SUBMITTED this 18th day of September, 2006.

4 KEMPPPEL, HUFFMAN AND ELLIS, P.C.  
5 Attorneys for Adak Eagle Enterprises, LLC  
6 d/b/a Adak Telephone Utility

7  
8   
9 Dean D. Thompson

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11   
12 Paul J. Jones





United States Department of Agriculture  
Rural Development

SEP 27 2005

Mr. Larry D. Mayes  
CEO and General Manager  
Adak Eagle Enterprises, LLC  
d/b/a Adak Telephone Utility  
4101 Arctic Boulevard, Suite 205  
Anchorage, Alaska 99503

Dear Mr. Mayes:

We have completed the preliminary studies of your organization's "A" loan application and are submitting the results of these studies for your consideration. It should be understood that this letter is not a commitment that a loan will be approved. Our studies show that concurrent loans in the amount of \$3,644,000 made by the Rural Utilities Service (RUS) and \$2,550,450 made by the Rural Telephone Bank (RTB), along with a guaranteed loan in the amount of \$150,000 from the Federal Financing Bank (FFB) guaranteed by RUS, will be required. The concurrent loan ratio between RUS and the RTB is based on the total amount of funds appropriated for Fiscal Year 2005 for RUS cost-of-money loans and RTB loans. These loans will bear interest at the rate applicable to each advance of loan funds based on the average yield on outstanding marketable obligations of the United States having a final maturity comparable to the final maturity of the advance. The RUS loan interest rate will be fixed at the time of each advance. The interest rate on the RTB loan advance will be an interim rate. A permanent interest rate will be determined on the RTB loan advance at the end of the fiscal year in which the advance is made based on the RTB's cost-of-money rate for that fiscal year. The guaranteed loan interest rate is fixed by FFB with respect to each advance in accordance with the FFB statute. An interest rate of 5.00 percent for the contemplated loans was used in our feasibility study.

Our studies show that \$6,223,000 of the above funds, will be needed to: (1) connect 122 new subscribers; (2) completely rebuild existing outside plant system using a Fiber to the Premise (FTTP) design; (3) install a digital loop carrier (DLC) at central office; (4) install Optical Network Units (ONU's) at each subscriber location and install CAT 5 wiring inside each residence; (5) upgrade and replace HVAC and electrical systems; (6) finance initial operating costs; and (7) provide for other system improvements. In addition to funds required for construction, the enclosed preliminary Telephone Loan Budget, RUS Form 493, includes \$121,450 for investment in RTB Class B stock. The Stock will be issued at the time of each RTB loan fund advance in an amount equal to 5 percent of such advance for all other purposes.

If a loan is approved, no "A" loan funds will be released until RUS has entered into a contract of guarantee with FFB and FFB has agreed, with RUS approval, to make your organization a guaranteed loan of \$150,000 to finance the operating funds in the "A"

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To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14<sup>th</sup> and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

loan guarantee commitment, and your organization has furnished to RUS, among other things, all of the documents, opinions, and other evidence listed in the loan contract applicable to this loan, including:

(1) evidence, in form and substance satisfactory to RUS, that the conditions in the contract of guarantee referred to above have been satisfied to the extent and in the manner prescribed by RUS;

(2) the FFB Note and the Reimbursement Note, both duly authorized and executed in the manner prescribed by RUS;

(3) evidence that your organization has duly authorized, executed, recorded, and filed the necessary security instruments, in form and substance satisfactory to RUS;

(4) evidence that your organization shall make all loan payments to RUS and RTB utilizing electronic funds transfer procedures as specified by RUS;

(5) evidence that your organization has received all necessary approvals from the Federal Communications Commission (FCC) and the National Exchange Carriers Association (NECA) to receive support from USF and waivers have been granted by the FCC to participate in the NECA pools and receive universal service fund revenues immediately; and

(6) evidence that your organization has been granted a permanent Certificate of Public Convenience by the Regulatory Commission of Alaska.

The first advance of "A" loan funds will include but not be limited to:

1. The amount then owing for interim financing for construction subsequent to February 14, 2005, as approved by RUS.
2. The cost of preloan engineering services in an amount to be approved by RUS.
3. An amount for the purchase of any applicable RTB Class B stock.

Subsequent advances of loan funds will not be made until your organization has submitted evidence, satisfactory to the Administrator, that any debts incurred through interim financing and all associated prior liens have been discharged.

The loan agreement and related security instrument will provide for the following provision:

Adak shall provide quarterly Financial and Statistical Reports, RUS Form 479, along with a Statement of Cash Flow based on the information in the quarterly report and the report must be submitted to RUS for every quarter of the fiscal year, fifteen (15) days following the end of each such period.

Debt service payments are to be made on a monthly basis for your concurrent RUS/RTB loan and on a quarterly basis for your FFB guaranteed loan. This requirement will be included in the mortgage note.

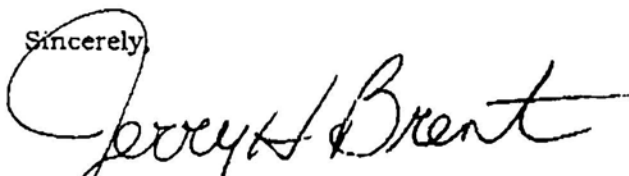
The mortgage will contain a provision requiring your organization to maintain a TIER of at least 1.0 throughout the forecast period ending December 31, 2009. After that date your organization will be required to maintain a TIER of at least 1.50.

The maturity period for your "A" loan is 19 years as you requested with the information submitted as a part of the loan application package. The principal repayment period will be 17 years. The approximate amounts to be repaid will be \$5,419,000 at a monthly payment of \$26,600 for the RUS portion, \$3,793,000 at a monthly payment of \$18,600 for the RTB portion, and \$223,000 at a quarterly payment of \$3,300 for the FFB portion, assuming the interest rates used in the feasibility study.

The actual repayment of the loans will depend on the interest rate applicable to each advance and the schedule of those advances. A savings in interest costs over the life of the loan would result if a shorter amortization period were selected.

We would appreciate any suggestions you may have with respect to the matters discussed in this letter. If you concur in the above requirements, please let us know by facsimile (202-690-4654) with a follow-up letter from an officer of your organization and indicate the maturity period desired for the loan, if shorter than the period stated above. We will then proceed with our studies. Our office should, however, be advised of your decision immediately upon receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry H. Brent". The signature is fluid and cursive, with a large initial "J" and "B".

JERRY H. BRENT, Director  
Northern Division  
Telecommunications Program

Enclosure

USDA-RUS Preliminary <b>TELEPHONE LOAN BUDGET</b>		NAME OF BORROWER Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility	
		BORROWER and LOAN DESIGNATION Alaska 527-A13 Adak	
BUDGET ITEM	PRIOR LOAN RESERVES AS OF:		NEW PROJECT BUDGET C
	RESERVE BALANCES A.	AVAILABLE FOR NEW PROJECTS B.	
1. CONSTRUCTION	a. CENTRAL OFFICE		\$1,159,580
	b. OUTSIDE PLANT		3,426,651
	c. LAND and BUILDINGS		196,500
	d. SPECIAL PROJECTS		
2. ENGINEERING	a. PRELOAN		100,000
	b. CONSTRUCTION		860,269
3. OPERATING EQUIPMENT	a. OFFICE EQUIPMENT		25,000
	b. VEHICLES and WORK EQUIPMENT		305,000
4. a. OVERHEAD EXPENDITURES			
	b. CLASS B STOCK - RURAL TELEPHONE BANK		121,450
5. OPERATING FUNDS			150,000
6. REFINANCING WITH LOAN FUNDS			
7. ACQUISITIONS			
8. OTHER			
9. TOTALS		\$0	\$0
10. LESS AVAILABLE FROM PRIOR LOANS (COL. B, ITEM 9)			0
11. LESS NONLOAN FUNDS			
12. TOTAL NEW LOAN FUNDS			\$6,344,450
13. HARDSHIP LOAN			
14. CONCURRENT - COST OF MONEY			3,644,000
15. CONCURRENT - RURAL TELEPHONE BANK			2,550,450
16. GUARANTEED LOAN			150,000
17. OTHER LOAN			
<b>REQUIRED ADDITIONAL BUDGET DATA</b>			
18. PRIOR LOANS		19. NONLOAN FUNDS, AS ADJUSTED	
PRIOR LOAN TOTALS	\$0	NONLOAN FUNDS, PRIOR LOAN	
REA LOANS		SALE OF PROPERTY	
RTB LOANS		OTHER	
RUS LOANS		TOTAL NONLOAN FUNDS	\$0
GUARANTEED LOANS			
		20. CUMULATIVE ADVANCES AS OF PER 1	
		REA	\$0
		RTB	0
		FFB	0
		RUS	0
		21. UNADVANCED OUT	
		UNADVANCED FUNDS \$ 0	
22. RETIRED PLANT		NEW & ACQUIRED AREAS	
ESTIMATED ORIGINAL COST OF RETIRED PLANT (this item)		\$265,500	
ESTIMATED SALVAGE VALUE OF RETIRED PLANT (this item)			
<b>NOTES</b>			
<p>The retired plant cost is for outside plant.</p>			